

**ARIZONA CONSTRUCTION GENERAL PERMIT
RESPONSE TO SIGNIFICANT COMMENTS
(A.A.C. R18-9-A908(E)(2))**

Administrative Record

The permit rationale (or fact sheet) dated February 29, 2008 sets forth the basis for permit conditions to be applied statewide through issuance of the new Arizona National Pollutant Discharge Elimination System (AZPDES), General Permit for Discharge from Construction Activities (CGP). The CGP is intended to authorize stormwater point source discharges to Waters of the United States from construction activities that disturb one or more acres of land.

The previous CGP, AZG2003-001, expired on February 28, 2008.

Prior to the Department preparing the draft permit and providing public notice, stakeholder meetings were held on April 23, 2007 and April 30, 2007 in Tucson and Phoenix, Arizona, respectively.

On December 7, 2007, the public notice for CGP AZG2008-001 was published in the Arizona Administrative Register (M07-658). Public comments were received by the Department until January 25, 2008.

Subsequent to public notice of the draft permit, the Department conducted public meetings on the following dates at the locations indicated:

- Wednesday, January 9, 2008 at 8:00 a.m. in Conference Room 3175 at Arizona Department of Environmental Quality, 1110 West Washington Street, Phoenix Arizona
- Friday, January 18, 2008 at 1:00 p.m. in Conference Room C, Tucson Public Works Building, 201 North Stone Street, Tucson, Arizona.

SUMMARY OF PROVISIONS THAT CHANGED FROM DRAFT PERMIT TO FINAL PERMIT

The following is a summary of significant changes between the draft and final permit made in consideration of public comments. Additional information on other changes is included in the comments and responses in Items A.1 through K.12., which follow.

- **Permit Part II.** A default authorization is included in the final permit. The former permit had default authorization in two days after the Department's receipt of a complete and accurate Notice of Intent (NOI). Because many NOIs are received by regular mail the operator would have little way of documenting the receipt date. As such, the draft permit had no provision for default authorization. However, in response to comments on this issue, the final permit has been changed to include a 'default' authorization of 7 days after the Department's receipt of a complete and accurate NOI.
- **Permit Part III.** The statement that in preparing the SWPPP, the operator must comply with Arizona Board of Technical Registration requirements is removed from the final permit. However, removing this statement from the permit does not alter the operator's duty to comply with any applicable BTR requirements; if there are questions, persons should contact the BTR.
- **Permit Part IV.H.1:** The inspection schedule in the draft permit no longer includes increased inspection frequency during the monsoon season, and inspection in response to rain events has been changed from 0.25 inches of rain to 0.50 inches of rain. The inspection schedule in the final permit is consistent with the inspection schedule in the former Arizona construction general permit.
- **Permit Part IV.I:** The maintenance schedule for Best Management Practices (BMPs) also has been changed in the final permit. The proposed requirement for repair of silt fences within 24 hours is changed to 7 calendar days or before the next rain event, whichever is sooner, consistent with the maintenance schedules for repair of most other BMPs.

- **Permit Part VIII:** The provision for “bypass” and “upset” are added to the final permit. These provisions were both in the former permit and are added to the final permit pursuant to 40 Code of Federal Regulations (CFR) 122.41(m) and (n).

RESPONSE TO SIGNIFICANT GENERAL COMMENTS

A.1 COMMENT

The Department received comments that Permit Number AZG2003-001 should be administratively continued to allow additional stakeholder participation and comment in preparing the replacement Construction General Permit (CGP).

RESPONSE

Construction projects not authorized coverage prior to the permit expiration date would not be able to obtain coverage under the administratively continued permit and would have to apply for an individual permit, or otherwise be in violation of Arizona Revised Statute (A.R.S.) § 49-255.01 and the Clean Water Act. Providing individual permit coverage for construction projects would result in significant delays in coverage and project commencement. Therefore, an administrative continuation is not in the interest of providing effective and expeditious coverage to operators of new construction projects requiring AZPDES coverage. Further, the Department believes that all comments have been adequately and appropriately addressed.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

A.2 COMMENT

Comments were received that concrete washout provisions under the APP program are not sufficiently protective of the environment and, therefore, additional measures should be incorporated into the permit.

RESPONSE

Part IV.D. of the permit was revised to encourage concrete washout to be conducted at the plant or dispatch facility whenever possible versus at the construction site. Otherwise concrete washout activities conducted at the construction site must comply with the APP program at A.A.C 18-9-B301(L)(A)(1.12), (Comments received relating to this rule will be forwarded to the APP program for consideration.) Alternatively, prefabricated washout containers can be utilized on-site, as long as rinsate (wastewater generated in the washout process) is not discharged to the ground and is appropriately disposed.

Brian Ham
Steve Wadkins, Concrete Washout of AZ
Garrett Ham, Santa Rita Environmental
Domingo Castillo
Kathi Roche
Thomas Oldham
John Salgado

A.3 COMMENT

Comments were made that some of the provisions in the draft permit are more restrictive, as well as some being less restrictive, than the Federal permit and that the final permit should be modified to correspond with the Federal permit provisions. Statements were also made that Arizona’s permit requirements cannot be more restrictive than the Federal permit.

RESPONSE

The Department acknowledges that some of the provisions in Arizona’s Construction General Permit differ from those in the Federal permit, while others are similar or the same. The Department disagrees that Arizona’s CGP cannot include provisions that are different from the Federal permit. Pursuant to A.R.S. 49-255.01(B), the Director may adopt rules to reflect local environmental conditions...that are no more stringent than the Clean Water Act. A permit is not a rule and therefore

provisions in state permits can differ somewhat from those in a Federal permit. This feature gives the state, together with input from stakeholders, the flexibility to customize some of the permit conditions for Arizona. EPA does, however, retain the right to object to provisions of any permit issued by an authorized state, if it is less stringent than federal regulations or statutes.

Town of Gilbert
City of Phoenix

A.4 COMMENT

A commenter was concerned about the use of the term “Indian Country” in the permit and suggestions that it should be replaced with alternative term or phrase.

RESPONSE

In the interest of avoiding confusion about the intent and definition, the term “Indian Country” was not replaced. The term “Indian Country” is a legal term defined by EPA in 40 CFR 122.2. To replace the term could introduce unintended consequences in permitting activities. The permit language was not changed.

Jay Knoll, SAHBA

A.5 COMMENT

The permit should identify activities which do not normally require CGP coverage.

RESPONSE

Typical construction activities that may not require CGP coverage are listed in Part I.B of the Fact Sheet.

A.6 COMMENT

For ongoing construction projects, the requirement to obtain coverage under this permit should be extended from 90-days to 6 months or 1 year.

RESPONSE

The 90 day timeframe is typically used for transition under a general permit. ADEQ considers this should be adequate for an operator to update the SWPPP and submit a complete and accurate NOI necessary to obtain coverage under this permit. However, in response to the comment, the permit language has been changed to allow an additional 30 days, or up to 120 days for an existing operator to obtain new coverage.

Jay Knoll, SAHBA
Town of Marana

A.7 COMMENT

The Permit should be more prescriptive in SWPPP format, including binding options (three-ringed, etc.).

RESPONSE

The Department appreciates the intent behind the comment in that SWPPP formats tend to differ significantly. However, this permit is focused on the contents of the SWPPP which we consider more significant in protecting the environment. Prescribing a specific format may not be appropriate or a priority for all projects. The permit language was not changed.

David Mack, Granite Construction

A.8 COMMENT

The Permit should use the term “navigable waters” instead of “waters of the U.S.”

RESPONSE

State statute does relate AZPDES authority to “navigable waters”, a term which links back to the Clean Water Act (CWA). The CWA defines these as the waters of the U.S., including territorial seas. The Act does not, however, define the waters of the U.S. Rather, this has been defined by EPA for purposes of the CWA 402 program (e.g., NPDES) in 40 CFR 122.2, as well as by a series of case law and legal precedence. The Department considers the term ‘navigable waters’ to be a source of confusion to the general public. The CGP authority extends to waters of the U.S. The permit language was not changed.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

A.9 COMMENT

This Permit should allow “water used to wash vehicles where detergents are not used,” as the former CGP did. It is understood that ADEQ removed this authorization to be consistent with Aquifer Protection Program rules requiring general APP permitting for discharge of vehicle wash-waters. However, the Unified Permit Steering Committee (UPSC) determined that APP and AZPDES programs be kept on separate tracks. The CGP should continue to authorize vehicle wash-water discharges to surface waters.

RESPONSE

The Department does not agree that by making AZPDES and APP programs consistent with one another contradicts the spirit of the UPSC. The Department strives to make program areas consistent with, or at least to not knowingly conflict with, one another. Therefore, if vehicle and equipment washing is conducted, the operator also has obligations to comply with A.A.C. R18-9-D303 or another APP permit. The permit language was not changed.

Pima County DOT

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

A.10 COMMENT

The revised CGP should be tailored to provide flexibility for larger sites, particularly where the sites provide containment to prevent sediment from leaving the site. Many sites in Arizona involve hundreds if not thousands of acres disturbed at once. Generally speaking, the draft CGP continues the “one size fits all” approach to permitting, while providing little, if any, flexibility based on the size of the site.

RESPONSE

By definition, a ‘general permit’ is essentially a ‘one size fits all’ approach to permitting. This general permit attempts to cover the majority of construction activities that occur in the State. For alternative facilities that are so unique the conditions of a general permit can not ‘fit’, applicants may elect (or be required by the Department), to obtain coverage under an individual permit.

In specific response, mass grading increases the potential for and amount erosion and discharge. These must be minimized with erosion and sediment control BMPs, including inspections, maintenance, and stabilization. The permit language was not changed.

Fennemore Craig, Homebuilders Assoc. of AZ

A.11 COMMENT

There is confusion on the point of compliance with regards to sediment discharged to a MS4. For purposes of compliance with both the CGP and MS4 general permits, clarification on this from ADEQ would be helpful.

RESPONSE

Interior streets may be considered part of a private storm sewer system until they are deeded to a municipality, when by federal definition they become part of the municipal storm sewer system. This can occur either before the streets are constructed, during construction or sometime after construction. This largely depends on the municipality's local ordinances and processes.

Once the street is deeded to the municipality, the operator must ensure that effective perimeter control (e.g., curbside) BMPs are in place to minimize pollutant discharge to the MS4.

Town of Marana
Paul Haggerty, Lennar Homes

A.12 COMMENT

The permit should clarify that sites don't need to discharge unless there is a 'realistic potential for discharge'. Would like a simple, voluntary method available for making site specific determinations no permit is needed.

RESPONSE

The requirement to obtain permit coverage is tied under the Clean Water Act to facilities that discharge. Most construction sites, by the inherent nature of their activities, do have a realistic potential to discharge and construction sites are point sources under the Act. The Department recognizes there may be some unique scenarios that are exceptions to this general assumption, but they are not evident enough to include in a list in this CGP. No changes have been made to the permit.

Fennemore Craig, Homebuilders Assoc. of AZ

PERMIT PART I

B.1 COMMENT (Parts I.C.2.a.i, I.D. 5.f, and I.D.6.b)

Comments were received objecting to the limitation of only "emergency" fire fighting activities allowed as non-stormwater discharge.

RESPONSE

An actual fire is an emergency by definition under this provision. Non-emergency fire fighting activities, such as automatic sprinkler testing or training events, are beyond the scope of the stormwater construction general permit and are therefore not allowed in this permit. Discharges from non-emergency fire fighting activities may require alternative AZPDES permit coverage. The permit language has not been changed.

Town of Gilbert
City of Phoenix
Westland Resources
City of Tucson

B.2 COMMENT (Part I.C.2.a.i and ix)

The Federal permit allows reclaimed water used for dust control to be discharged and so should Arizona's permit.

RESPONSE

The Federal CGP has no definition of reclaimed water and therefore it does not appear in that permit. ADEQ encourages the use of reclaimed waters for dust control, compaction and irrigation uses, however, these are to be managed in a way that prevents discharge. This permit and the reuse rules (A.A.C. 18-9-704(G)(3)) both prohibit allowing runoff of reclaimed water (i.e. effluent) or mixing with stormwater. Reclaimed water is not banned from use on construction sites covered by this permit. Instead, the permittee is directed to not apply in rain events, or overwater or overuse such quantities that the reclaimed water ponds or flows off-site, which might constitute disposal. A clarifying note has been added to the permit.

Town of Gilbert
City of Phoenix
Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

B.3 COMMENT (Part I.C.2.a.viii)

The Federal permit does not address the discharge of fire hydrant, potable water line and well flushing “to ephemeral waters”.

RESPONSE

Arizona has an AZPDES DeMinimus General Permit (DGP) that was specifically tailored to address these types of discharges. The conditions of that permit vary depending on the designated uses of the waterbody receiving the discharge. The Department considers that discharges to ephemeral waters would be equally protective under the CGP. However, discharge to any other types of waterbodies other than ephemeral (intermittent, perennial, etc.) requires coverage under the DGP. No change has been made to the permit language.

Town of Gilbert
City of Phoenix

B.4 COMMENT (Part I.C.2.a)

The permit should allow discharge of landscape irrigation waters to be consistent with the Federal permit.

RESPONSE

Discharge of landscape irrigation water was not included in the former Arizona CGP as an allowable non-stormwater discharge and is not included in this permit. Irrigation water should be applied in a manner to minimize run-off from landscaped areas. This is not only a good BMP, but also a water conservation practice. However, as it relates to this permit, the discharge of landscape irrigation water can contain a variety of pollutants, including herbicides, pesticides, and nutrients, (and others as well if reclaimed water is used (see Comment B.2)). As such, irrigation water is not an allowable discharge in this permit and should be managed in a way that does not allow run-off or ponded water to leave the site. No change has been made to the permit language.

Town of Gilbert
City of Phoenix
Pima County DOT
Paul Haggerty, Lennar Homes
City of Tucson

B.5 COMMENT (Part I.C.2.f)

The provision in Part 1.C.2.f. concerning allowable non-storm water discharges during dry weather is unclear.

RESPONSE

This permit is a stormwater discharge permit that ‘allows’ some other discharges. The permit is not designed, however, to address discharges of waste waters that may impact special waters (i.e., unique, or impaired,) during non-storm events. Alternatively, the Deminimus General Permit (DGP) is specifically designed to address these types of discharge events in a manner tailored to protect these receiving waters. If such discharges are considered necessary the operator should apply for DGP coverage. The permit language has been revised for clarity and a note is added to specify this provision does not apply to ‘windblown dust’.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Westland Resources
Fennemore Craig, Homebuilders Assoc. of AZ

B.6 COMMENT (Part I.B)

Change the term “not consistent” to “in compliance” in this Part.

RESPONSE

The term ‘not consistent’ relates to the eligibility provision. For example, if a person applied for coverage under this permit for discharge of stormwater from a constructed gas station, or for mining activities, etc. the current language clarifies that this permit does not cover them. This is a different concept than discharging stormwater from a construction site in a manner that is not in compliance with this permit. That constitutes a violation, but is not the issue being addressed in Part 1.B. The permit language has not been changed.

Jay Knoll, SAHBA

B.7 COMMENT (Part I.E)

If an “Erosivity Waiver” is applied for, please change “If any discharge point from the construction site is within ¼ mile of an impaired or unique water...” to “If any discharge point from the construction site is directly to any receiving water (including dry washes), the site is not eligible for this waiver.”

RESPONSE

ADEQ’s experience to date with the Erosivity Waiver in the AZPDES CGP program for small sites (erosivity factor < 5, size under acres and short duration) has demonstrated it is generally protective of surface water quality. Additionally, even an exempt site is subject to state rules requiring compliance with surface water quality standards. Note too, the permit contains a provision in 1.D.7.e. that specifies that if discharges from these sites cause or contribute to non-attainment of water quality standards, then the operator may be required to obtain a permit. See also B.8.

ADOT, Tucson District Office

B.8 COMMENT (Part I.D.7.d)

“Delete 7.d. Exempt Discharges for “Erosivity Waiver.” The waiver invites too much opportunity for non-compliance, potential for future damage on a larger scale (i.e., flooding, mudslides, ...).

RESPONSE

The Erosivity Waiver is only available for use on small construction sites that meet strict qualifications (erosivity factor less than 5, which usually translates to a project of short duration that occurs during dry seasons). The intent is to waive only those construction activities that will not adversely impact water quality. The waiver is not available to sites that will disturb more than 5 acres of land.

As an additional protection, the waiver is not available for sites within ¼ mile of an unique or impaired water. Finally, Part I.D.7.e. provides that if an exempt site is operating in a manner that may cause or contribute to non-attainment, ADEQ may require the operator to obtain coverage. In response to comments, Part I.D.7.e is clarified that such sites need to be stabilized after completion of construction. With these combined provisions, ADEQ considers the permit to be protective with the option of a waiver. The permit language has not been changed.

ADOT Tucson
Phoenix

B.9 COMMENT (Part I.C.2.a.xi)

The commenter recommends including “with appropriate filtration of the water before discharge” to the provision for allowing water from dewatering operations and foundations to be discharged.

RESPONSE

The Department considers this a reasonable provision and an excellent BMP. However, the permit language was not changed because all the discharges referenced in Part I.C.2a. are only allowable if there are BMPs in place to minimize the frequency and duration of flow, and the concentration of pollutants, including sediments, in the discharge. The operator has options on which BMPs to employ to achieve this requirement. The permit language has not been changed.

ADOT, Tucson District Office

B.10 COMMENT (Part I.C.2.a.iii)
Recommend including “or areas of pollutants on an external building.”

RESPONSE

The Department is unclear on the meaning of the comment. The permit language has not been changed.

ADOT, Tucson District Office

B.11 COMMENT (Part I.D.4)
The language on compliance with water quality standard should be moved to Part VI. The language should be revised to address exceedance of water quality standards, per the 2006 MSGP “settlement negotiations.”

RESPONSE

ADEQ has moved the compliance with the water quality standards as requested. ADEQ has reviewed the language in the current federal CGP and determined it similar to that requested by commenter. The permit language has been revised in a manner consistent with the federal provision.

PERMIT PART II

C.1 COMMENT (Part II.B.2.j)
The SWPPP should not have to be on-site at all times, especially when a construction project is just beginning because there is no place to put it. Additionally, ADEQ should provide 24 hour notification prior to requesting the SWPPP for review.

RESPONSE

The Permit requires the SWPPP be on-site whenever construction activities are actively underway. A SWPPP is not intended to be developed and placed on a shelf. Rather it is to be used and referred to by on-site personnel during the construction process. Additionally the SWPPP is a ‘living’ document that must be continuously implemented and updated as site conditions change. The Permit does not specify or otherwise restrict where the SWPPP is maintained on-site. Rather, the Permit is written to provide flexibility as to where the SWPPP is maintained on-site (e.g. in a construction vehicle, lock box, trailer, etc.). Further, ADEQ expects to be able to access the SWPPP at any time during an inspection without prior notification. The permit language has not been changed.

APS

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

C.2 COMMENT (Part II.B.2.o)
The term “will need” (as related to environmental permits that will be needed for the project) should not be required to be identified on the NOI, because environmental permits should already be obtained.

RESPONSE

The NOI may not necessarily be the last permit coverage obtained for a given project. The intent is for the applicant to identify all permits that are needed for the project, not only those that are acquired prior to submitting the NOI. The permit language has not been changed.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

C.3 COMMENT (Part II.B.2.q)

Add definitions for “qualified” and “permittee.” as referenced in the NOI certification statement.

RESPONSE

The term ‘qualified’ relates to a ‘qualified signatory’ which is defined in Part VIII.J. of the permit.

In the context of this Permit, the term “permittee” is equivalent to a person that applied for permit coverage and does not warrant further definition. However, the permit language has been changed to substitute the word ‘owner’ or ‘operator’.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

C.4 COMMENT (Part II.B.2.c)

Why does ADOT have special consideration in this Permit?

RESPONSE

ADOT is also regulated under the Clean Water Act as a Municipal Separate Storm Sewer System (MS4) and as such requires an individual permit. ADEQ is currently drafting an integrated individual permit for ADOT that addresses their MS4, industrial and construction activities statewide. Under that permit, it is envisioned that ADOT will not file as an operator under the CGP. However, they must ensure that the contractors for their construction projects do file, and comply with, the CGP. Additionally, contractors on ADOT projects will be able to terminate their coverage under the CGP by turning the project back to ADOT for final stabilization under ADOT’s individual permit. As a result of this unique scenario, it is important that ADOT projects be identified for tracking and compliance purposes.

Town of Gilbert
City of Phoenix

C.5 COMMENT (Part II.B.6.b.iii)

For construction projects issued coverage under Permit AZG2003-001, preparing and submitting a NOI to obtain coverage will cause undue hardship and is not a fiscally responsible use of taxpayer resources.

RESPONSE

The 2003 permit is expired, and an expired NPDES permit only remains in effect until issuance of a new permit. Therefore, as of the date of signature, the 2003 permit is effectively gone. However, NPDES general permits allow a time of transition for those covered under existing permits to transition to new general permits. Under the federal program, this transition period is 90 days. ADEQ extended the period to 120 days for operators to file for new coverage if the project has not finished. The changes expected of an existing facility to retain permit coverage in most cases will be minimal.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Town of Marana

C.6 COMMENT (Part II.C.1.a.i.A)

Define the term “establish” with respect to the final stabilization requirements. Clarify final stabilization requirements.

RESPONSE

To better clarify the intent of this part, the term “establish” was removed and replaced with “native background vegetative cover for the area is in place on all unpaved areas and areas not covered by permanent structures.” Specifically if vegetative cover is being used, a density of 70% of the native background vegetative cover for the area must exist on all unpaved areas and areas not covered by permanent structures prior to submitting a NOT.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
APS
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
City of Phoenix
Town of Gilbert

**C.7 COMMENT (Part II.B.2.I)
Define “privately owned conveyance.”**

RESPONSE

In general, this term might apply to an Homeowners’ Association, but was not intended to apply to a specific homeowner’s ditch, for example. However, in consideration of comments on the difficulty of knowing what privately owned conveyances might be down-gradient and the Department’s limited use of this information, the requirement to identify this was removed from the permit.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
Paul Haggerty, Lennar Homes

**C.8 COMMENT (Part II.B.4)
Copies of the NOI should only be provided to MS4’s that request notification.**

RESPONSE

ADEQ considers the NOI should be directed to all MS4s a site may discharge to for their information. MS4s under permits are required to monitor construction activity in their permitted areas and this may aid them in this effort. Other MS4s may or may not have reasons for needing this information; however, ADEQ is not planning to determine which MS4s want this notification and which do not to determine compliance with the permit conditions. The permit language has not been changed.

Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
Paul Haggerty, Lennar Homes

**C.9 COMMENT (Part II.B.2.q)
Comment regarding the usage of the word ‘directly’ or ‘direction’.**

RESPONSE

The word “direction” was an error that has been changed to “directly” to match the wording in 40 CFR 122.22(d).

Paul Haggerty, Lennar Homes
ADOT, Tucson District Office

**C.10 COMMENT (Part II.C.1)
Add option for submitting NOT for sites obtaining coverage under other AZPDES permits (e.g., MSGP for mining operations).**

RESPONSE

An option for submitting a NOT is added for sites that have obtained coverage under another AZPDES permit. This option also existed in the NOT for the former permit.

Westland Resources
APS
Town of Gilbert
City of Phoenix

C.11 COMMENT (Part II.B.5.d)

The routine coverage provision for default authorization should be retained in the new permit.

RESPONSE

The draft permit stated that routine coverage was effective at the time the operator receives his authorization certificate, and did not allow a 'default' coverage period. This was changed from the previous permit because the operator typically does not know the date the program receives the NOI unless it is hand-delivered, or certified mail is used, etc. In fact, many of our NOIs are still received by regular mail. However, in response to the comments received, the permit has been revised to authorize coverage either 1) upon receipt of the authorization certificate from the Department or 2) within 7 days of submittal of an NOI to the program, whichever is earlier. However, to use this default, ADEQ considers the operator has an obligation to use a submittal method that will allow the verification of the date that the Surface Water Section receives the NOI. This provision does not apply to other effective dates in Part II.B.5.d., such as projects located within ¼ mile of an unique or impaired water.

City of Phoenix
APS
Forest and Soil Conservation Foundation
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
Fennemore Craig, Homebuilders Assoc. of AZ

C.12 COMMENT (Part II.C)

Exceptions are made for projects where homebuilders are transferring property or where a project on agricultural land has been completed and the property returned to agricultural use. For sites where no cover exists at the start of the project, please include the ability to return the site to its original condition and terminate the permit (coverage). Other commenters noted that we should add in the permit a clarification that final stabilization provision applies only to 'natural areas' and a road should or vacant lot that has no natural vegetation still needs stabilized.

RESPONSE

I

This issue depends largely on how 'original condition' is defined. In order to terminate coverage, erosion control measures equivalent to pre-existing conditions at the site are to be in place. In general, this would be the natural 'predisturbed' condition of the property. If a lot or section were cleared a year or two before an operator files for coverage on a project, for example, the expectation would be that the operator would properly stabilize on-site road shoulders and vacant lots before filing an NOT. Alternatively, If the project were in undisturbed desert, for example, shoulders and vacant areas not graded, cleared, or otherwise impacted, would not need to be addressed for the operator to terminate coverage. Also, for road shoulders or other areas that are essentially flat, the final stabilization measures needed may be different from those that slope or are in areas otherwise susceptible to erosion. As a general rule, if the construction activity increases the risk of erosion or sediment transfer, stabilization is needed before filing an NOT. No change has been made to the permit language.

APS
City of Phoenix
Town of Gilbert

C.13 COMMENT (Part II.C.)

Suggest use of the final stabilization language that exists in the current EPA Construction General Permit about using temporary erosion control measures designed to last at least 3 years without active maintenance as an option for NOT filing in arid environments.

RESPONSE

The Department did not consider or propose this language in the published draft. This change may have implications that the Department would like to further review with an opportunity to solicit public comment. As such, this would be an appropriate consideration for the next permit revision. No change has been made to the permit language.

Jay Knoll, SAHBA

C.14 Comment was received requesting that ADEQ should provide a week's notice to MS4s before accepting an NOT in municipal areas. This would allow the MS4 an opportunity to check the site.

RESPONSE

Conceptually, the Department supports this change in support of MS4 efforts, however, would like to solicit additional comment before changing the timeline for NOT filing to be effective. As such, this is an appropriate consideration for the next permit revision. No change has been made to the permit language.

ADOT, Tucson District Office

C.15 COMMENT (Part II.B.5)

New operator shall receive an authorization certificate before assuming operational control or commencing work on-site. If we legally transfer ownership and/or operational control and file an NOT we should no longer be seen by ADEQ as having operational control. We do not want our NOT or transfer of control to be delayed because the new owner has not filed their NOI.

RESPONSE

In order to avoid any short term, long term, or indefinite gap in coverage, the prospective operator must file a complete and accurate NOI and obtain permit coverage before the existing operator can file the NOT. The intent is to avoid having the operator conduct construction activities (e.g., grading) and then, for example, sell the property without the prospective operator having permit coverage, implementing the SWPPP, conducting inspections, and meeting all other permit requirements. As an alternative the existing operator always has a legal option to complete final stabilization measures and then file an NOT before property transfer, No change has been made to the permit language.

Paul Haggerty, Lennar Homes

PERMIT PART III

D.1 COMMENT (Part III.E)

Comments were received regarding the timeframes for updating the SWPPP. Comments indicated that 15 business days was too long to update a deficient SWPPP. EPA also noted that the SWPPP didn't have a timeline to implement the changes.

RESPONSE

The Department did not propose a shortened timeline in the published draft. This change may have implications that the Department would like to further review with an opportunity to solicit public comment. As such, this would be an appropriate consideration for the next permit revision. The SWPPP update timeline was not changed. However, the Department did add language that changes to the SWPPP are to be implemented as soon as possible and before the next rain event if practicable.

EPA

ADOT, Tucson District Office

D.2 COMMENT (Part III.A)

The Department received numerous comments and questions about the intent of this Part requiring that the operator comply with Board of Technical Registration requirements when preparing the SWPPP.

RESPONSE

The Department did not intend this to be a requirement that all SWPPPs be prepared by a BTR registrant. Rather, the intent was to provide awareness that BTR requirements may necessitate that a professional engineer or a landscape architect design some BMPs or certify certain components. However, due to the amount of comment and confusion generated by this language, ADEQ has removed the reference from the final permit. Questions regarding this issue should be directed to the BTR.

EPA

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

Jay Knoll, SAHBA

ADOT - Tucson

Drew Neptune, Lennar Homes

Westland Resources

APS

Marana

Fennemore Craig, Homebuilders Assoc. of AZ

Association of General contractors

AMEC Earth & Environmental, Inc.

City of Tucson

Town of Gilbert

City of Phoenix

Forest and Soil Conservation Foundation

D.3 COMMENT (Part III.A.3)

Delete the term “all” with respect to the requirement that all operators must certify SWPPPs, as this may not be achievable for those using joint SWPPPs. An operator cannot use the certification should the SWPPP be used jointly by other operators who were not a part of the original design. Additionally, should the original SWPPP be used jointly, it will be inappropriate for other operators to certify all attachments or any attachment specifically added for the benefit of another operator.

Also, commenters suggested alternative certification provisions to be made for secondary operators, and inspectors.

RESPONSE

Certification requirements are defined in 40 CFR 122.22 (adopted by Arizona), including who is authorized to sign documents required by the permit (SWPPPs, NOIs, reports, etc.). Permit certification requirements cannot be less stringent than these rules. Therefore, only those identified in 40 CFR 122.22 can certify documents required by the permit.

This ensures that the SWPPP (and other required documents) are developed and reviewed by a responsible party with the ability to implement the BMPs and other commitments. However, the Department does acknowledge that in the cases of joint use in the instance described above, a secondary operator would not be able to certify that the SWPPP was prepared under his direction or supervision. For this reason, the certification language has been slightly changed to, “I certify....document and attachments were prepared under my direction or supervision, as applicable.”

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

Town of Marana

D.4 COMMENT (Part III.C.3)

The site map should only include the proposed final grade design for stormwater flow, and not have to be updated during construction activities to reflect drainage patterns.

RESPONSE

It is not the intent of this provision to understand the final grades, but rather to understand the (sometimes changing) grades that exist during construction that may affect the need for BMPs or potentially change discharge points. Thus, the site map should document conditions during each major phase of construction. Limiting stormwater flow direction(s) on the site map to only final design does not accurately represent site conditions occurring during construction activities when that knowledge is most important for BMP design. Clarification was added to the Fact Sheet; no change was made to the permit language.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Jay Knoll, SAHBA
Paul Haggerty, Lennar Homes

D.5 COMMENT (Part III.D.5)

Provide clarification and examples of what is meant by “copies of other agreements....”

RESPONSE

This reference is to other documents, local permits, grading permits, 404 permits, etc. that may impact the site BMP. The permit language has been clarified.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
ADOT, Tucson District Office

D.6 COMMENT (Part III.G.3)

The term “immediately” with respect to when a SWPPP must be made available is ambiguous and unclear and should be replaced with “as soon as practicable.”

RESPONSE

The Department has removed the term ‘immediately’ from this section as it is not necessary for permit clarity. ADEQ considers it clear that the SWPPP must be made available anytime to an authorized inspector while the inspector is on-site at the time of inspection.

Jay Knoll, SAHBA
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

D.7 COMMENT (Part III.G.2)

The requirements that the SWPPP be locally available and the SWPPP shall be on-site contradict.

RESPONSE

The permit requires that the SWPPP be on-site whenever construction activities are actively underway. When construction activities are not actively underway, the SWPPP is not required to be on-site but must be locally available. For example, for a site that has interim stabilization, but no work is occurring, the SWPPP is to be available during business hours at a local office, library or other public access building. The intent is to ensure the SWPPP is available to the ADEQ or any other federal, state or local authority having jurisdiction over the project at any reasonable time, including times when construction activities are not actively underway. When construction is occurring, the SWPPP is to be available on-site. Therefore, these requirements potentially apply to differing scenarios and do not conflict. The permit language has not been changed.

Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
APS

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

D.8 COMMENT (Part III.E)

Please clarify if a separate SWPPP is required if a “permittee” does not mention any “support activities” in the permittee’s original SWPPP or how the process should work for the SWPPP (i.e., an addendum complete with separate plan sheet(s), appendix, revise table of contents, narrative, plan(s) with respect to the changes). Also include in this clarification that the construction schedule will also need to be amended and any other component of the SWPPP that is impacted.”

RESPONSE

If a permittee does not mention support activities that should be included, it is a violation of the permit, and is required to be reported under provisions of Part VII.L.7. The operator is also required to amend the SWPPP to include these activities and associated BMPs, inspections, etc. All components of the SWPPP that are impacted by this change need to be amended. The Department is not dictating the format of that amendment, however, and just requires clear documentation that the SWPPP has been modified to include all relevant requirements. The extent of changes may dictate what format is more practical for amendment. The permit language has not been changed

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

D.9 COMMENT (Part III.C.2.d)

There is a change in the permit to include the percentage of impervious surface in lieu of the runoff coefficient. The operator should have the choice of which number (percentage of coefficient) to provide.

RESPONSE

This permit requires that the percent impervious surface be included in the SWPPP, based on questions from permittees and indications this would be an easier number for the operator to provide. The operator is not prohibited from also including the runoff coefficient if he so elects. The permit language has not been changed.

Westland Resources

D.10 COMMENT (Part III.C.3.h)

Comments were received indicating this wording should be changed to limit locations and registration numbers to on-site dry wells, or to otherwise define the area of concern for off-site drywells that may be impacted. Some commenters were concerned that drywells miles away from the site may need to be identified.

RESPONSE

The permit intended only to collect information on drywells that could rather directly receive a discharge from the site. The permit language has been revised to read, “Locations and registration numbers of all on-site dry wells and dry wells on adjacent properties that have the potential to receive stormwater from the site.”

APS

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

D.11 COMMENT (Part III.G.2.a)

ADEQ should clarify in this part that SWPPPs must be made available only to federal, state or local authorities having jurisdiction over the project “for stormwater discharge purposes only.”

RESPONSE

The Department has reworded this requirement as the intent of this provision was related to those with stormwater jurisdiction. However, the commenter should be aware the SWPPP is a public

document. As such, per part III.G.4, the SWPPP may be requested by any public or private party for any reason and must be available for public review.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

D.12 COMMENT (Part III.C.3)

Requiring the identification of off site dry wells is inconsistent with the decision made by the Unified Permit Steering Committee to keep the Aquifer Protection Permit and AZPDES permit programs on a separate track.

RESPONSE

The Permit requirement (see also Comment D.10) to identify dry wells on adjacent properties does not put AZPDES and APP on the same track. The intent is for the operator to identify potential stormwater receptors in preparing the SWPPP, which is entirely consistent with the stormwater program, and may be important to understanding the stormwater system at the site. No change has been made to the permit.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

D.13 COMMENT (Part III.C.2.f)

Delete the requirement to include 'surface waters' within a one mile radius and change this to waters of the US.

RESPONSE

Clarifying changes were made to the permit that waters of the U.S. including tributaries are to be included on the site map.

City of Phoenix
Town of Gilbert

D.14 COMMENT (Part III.E)

The draft permit does not specify a deadline for implementation of revisions to the SWPPP which are identified. Suggest that implementation be required prior to the next storm (rain) event whenever practicable, and as soon as practicable otherwise.

RESPONSE

This permit part is revised to required implementation of the revised SWPPP before the next rain event whenever practicable. If this is impracticable, then reason(s) shall be documented in the SWPPP and revisions implemented as soon as possible.

EPA Region IX

PERMIT PART IV

E.1 COMMENT (Part IV.I)

The Department received numerous comments that timeframes specified in the permit for BMP maintenance are too restrictive; specifically, repairs to silt fences within 24-hours may not be obtainable. In some cases, these repairs are contracted out to a third party that may not be immediately available.

RESPONSE

In response to comments, the timeframes for BMP maintenance have been revised in the final permit to require maintenance activities be completed within 7 calendar days of discovery or before the next storm event, whichever is sooner, or as otherwise prescribed by the Permit. If implementation before the next storm event is impracticable, the reason(s) for delay must be documented in the SWPPP and alternative BMPs must be implemented as soon as possible.

EPA

City of Phoenix
Town of Gilbert
Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
Paul Haggerty, Lennar Homes
Westland Resources
APS
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
Fennemore Craig, Homebuilders Assoc. of AZ

E.2 COMMENT (Part IV.D.)

Suggest adding a special condition to designate specific concrete washout areas for projects where this practice occurs (see EPA SWPPP Guidance – P2, Principle 3).

RESPONSE

The permit is revised to encourage concrete washout be conducted at the concrete provider's own plant or dispatch facility, consistent with EPA guidance. Otherwise concrete washout activities conducted at the construction site must comply with the APP program at A.A.C 18-9-B301(L)(A)(1.12). (See also Comment A.2)
EPA

E.3 COMMENT (Part IV.A.3 and 4)

The Department received several comments regarding the use of either sediment or erosion controls, or percentages of both, and some comments regarding that both are not necessary. Also the requirement to achieve 'maximum pollutant removal' is excessive.

RESPONSE

The SWPPP must rely on erosion controls as the primary means of preventing stormwater pollution. Sediment controls provide a necessary secondary line of defense to properly designed and installed erosion controls. The suite of BMPs included in the SWPPP should reflect the specific conditions at the site, therefore the percentages of both erosion controls and sediment controls depends upon the particular site conditions. The permit requirement to implement both erosion and sediment controls is retained, but the language is revised to have sediment kept on site "to the extent practicable" instead of 'maximum pollutant removal'.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
APS
Fennemore Craig, Homebuilders Assoc. of AZ
Town of Gilbert
City of Phoenix

E.4 COMMENT (Part IV.E.4)

The permit should state that superchlorinated wastewaters can be discharged to the sanitary sewer, if the municipal sewer system allows it. Define 'superchlorinated wastewater'.

RESPONSE

Any non-stormwater (or stormwater flow), including superchlorinated wastewaters, can be discharged to a sanitary sewer if permitted by the owner/operator of the downstream sewage treatment facility. In many cases, this may be an appropriate BMP. A clarifying note was added to the permit. The permit also now clarifies superchlorinated waters are those containing chlorine above the concentrations acceptable in a potable water system.

Town of Gilbert
City of Phoenix
Forest and Soil Conservation Foundation
Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Jay Knoll, SAHBA

E.5 COMMENT (Part IV.C.5)

The placement of velocity dissipation devices may require Individual Section 404 permitting and should therefore be left to the discretion of the permittee.

RESPONSE

The placement and use of velocity dissipation devices is necessary to meet erosion control requirements. The permit language has not been changed.

Pima County DOT
Paul Haggerty, Lennar Homes

E.6 COMMENT (Part IV.B.1.c)

Stabilization control (to prevent the formation of rills and gullies) is not necessary if culvert inlets have sediment control.

RESPONSE

ADEQ concurs that in some cases this may be true. The permit language has been revised to state that the SWPPP must include "measures to sufficiently minimize the threat of erosion at culvert locations to prevent the formation of rills and gullies..."

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

E.7 COMMENT (Part IV.B.2.c)

Add clarification to what constitutes a "drought," 1-month, 2-months, etc., with respect to map period.

RESPONSE

The definition of 'drought' has been amended to reflect a 3-month Standard Precipitation Index (SPI) for purposes of this provision. This timeframe reflects short- and medium-term moisture conditions and provides a seasonal estimation of precipitation which would be relevant for establishing vegetation at final stabilization.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

E.8 COMMENT (Part IV.G.3)

List each and every applicable Aquifer Protection Program Permit.

RESPONSE

This particular reference to the APP program was added because vehicle and equipment washing and concrete wash-out facilities are common features at construction sites and, therefore, is relevant to this permit. However, listing each and every APP Permit would be exhaustive and most would have no relevance. Any specific questions regarding the need for APP Permits should be directed to ADEQ's Aquifer Protection Program. No change has been made to the permit language.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Drew Neptune, Lennar Homes

E.9 COMMENT (Part IV.H.1)

The Department received numerous comments regarding the proposed inspection frequency, including the change to 0.25 inch of rain and the increased frequency of inspection during the monsoon. The definition of 'monsoon' was unclear to many. Another comment was that there is also a winter wet season that should be considered. The majority of commenters objected to the proposed language as providing a significantly increased burden since inspections at many sites may be contracted out.

RESPONSE

In response to the comments, the inspection frequency in the previous permit has been retained (i.e., monsoon inspection requirement is no longer in the permit). This requires the site be inspected a minimum of once every 7 calendar days, OR a minimum of once every 14 calendar days and also within 24 hours of the end of each rain event of 0.5-inches or greater. However, a note has been added that the Department encourages more frequent inspections of BMPs, especially before or during a rain event, and “spot” inspections to ensure BMPs will be effective in minimizing pollutant discharges.

Paradigm Engineering
Gilbert/Phoenix
Pima County DOT
Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
Paul Haggerty, Lennar Homes
Westland Resources
Marana
Forest and Soil Conservation Foundation
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
Fennemore Craig, Homebuilders Assoc. of AZ
Association of General contractors
AMEC Earth & Environmental, Inc.
EPA Region IX

E.10 COMMENT (Part IV.H.1) Provide clarification/defining of “rain event.”

RESPONSE

The definition of “rain event,” as used in this permit has been added to Part X and means “when raindrops (ultimately resulting in 0.5 inch accumulation) reach the ground surface of the construction site.” Separate rain events are distinguished by a 24 hour period of no rain reaching the ground surface of the constructions site. “

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Drew Neptune, Lennar Homes

E.11 COMMENT (Part IV.H.4.e) No guidance is provided with respect to describing the visual inspection of stormwater discharged from the site and this requirement is not in the spirit of the permit; therefore, this requirement should be stricken. Additionally, many sites in Arizona do not have on-site detention of stormwater.

RESPONSE

The required description of stormwater discharged from the site is intended to be qualitative in nature, but still provides an indication of BMP effectiveness. This requirement is relevant whether or not a site has on-site detention. The language has been changed to clarify that a visual description is made of stormwater ‘discharging’ from the site. The Department recognizes that there may be no stormwater discharging at the time of inspections, but when there is, this visual assessment is to be made.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Westland Resources

E.12 COMMENT (Part IV.C.4) Aren’t the dry weather discharges in this part the same as allowable non-storm water discharges in Part I.C.2.

RESPONSE

No. The dry weather discharges discussed in Part IV.C.4 specify “discharge of sediments,” not allowable non-storm water discharges. Clarifying changes have been made to the permit.

Jay Knoll, SAHBA
APS

E.13 COMMENT (Part IV.B.1.e)

In most areas, states and jurisdictions you must accept run-off from other property. This requirement for run-on diversion should be eliminated.

RESPONSE

ADEQ understands that diverting stormwater run-on to adjacent property (without permission) may be considered trespass. However, this provision in the permit does not mandate such diversion. If stormwater can be appropriately diverted around the disturbed area, whether on the same property or not, run-on diversion is a viable BMP. However, this provision is clarifying that if stormwater is not diverted, engineering controls and BMPs at the site must be sufficient to account for off-site contributions of stormwater and non-stormwater flow that may contact disturbed areas. Clarifying changes have been made to the permit.

Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
David Mack, Granite Construction
Marana

E.14 COMMENT (Part IV.C.6)

Comments were made requesting clarification on the need for inlet protection, and that the use of inlet protection is not necessarily the best or appropriate BMP for all situations.

RESPONSE

In response, ADEQ agrees that there may be some places where inlet protection is not necessary, for example for discharge to a total retention basin on-site. The Permit is revised to clarify an operator is to provide effective sediment control BMPs during construction at storm drain inlets *that discharge or could discharge to waters of the U.S., either directly or via the local MS4.*

Jay Knoll, SAHBA
Drew Neptune, Lennar Homes
David Mack, Granite Construction
Paul Haggerty, Lennar Homes

E.15 COMMENT (Part IV.C.2)

Several comments were made concerning the provision for stockpile protections. One commenter asks what ADEQ considers to be a stockpile. Others indicated the installation of silt fences around stockpiles may be unnecessary or impractical as they may impede activities; stockpiles are commonly stored on the streets; and stockpiles are moved frequently. Comments were also made about the timeframe of installation of BMP's around stockpiles and whether or not crushed/decomposed granite is allowed on the streets.

RESPONSE

The Permit refers to sediment control BMPs for soil stockpiles. The intent is not necessarily to include stockpiles of other materials (such as rock) that have a minimal component of fines that may impact stormwater quality. Soil stock piles are pollutant sources that present an overall increase in the surface area of exposed soils, along with severe slopes that contribute to increased sediment transfer. Therefore, sediment control BMPs are necessary to reduce potential increases in pollutant discharge. One commenter suggested that stockpiles can be placed in a 'bowl area' on site to contain the sediment discharges; the permit does not necessarily prohibit this if it is effective. The provision allows 'other effective sediment controls' to be implemented versus use of a silt fence.

While this particular provision applies only to soil stockpiles, other stockpiles- particularly those with fine particles, constitute a pollutant source, and an operator needs to implement appropriate BMPs, as necessary to protect stormwater quality.

The placement of soil stockpiles in streets is prohibited by the Permit, and may also be prohibited by the MS4, as streets can be a stormwater conveyance. The operator should avoid the placement of any materials in the streets or other stormwater conveyances. The permit language has been changed to clarify that effective controls are required, "except when stockpiles are being actively worked (i.e, controls must be in place evenings, weekends, and other downtimes.)"

Drew Neptune, Lennar Homes
David Mack, Granite Construction
Paul Haggerty, Lennar Homes
APS
Fennemore Craig, Homebuilders Assoc. of AZ
Town of Marana
City of Tucson

E.16 COMMENT (Part IV.F.3)

The requirement for placement of post-construction structural BMPs on upland soils to the degree attainable should be deleted.

RESPONSE

The SWPPP must include a description of all permanent stormwater controls (including those on upland soils) that will be constructed, along with the buildings, roads, parking lots, and other structures. This provision does not mandate post-construction BMPs. Instead it indicates where post-construction structural BMPs are installed for maximum effect. The permit language has not been changed.

Drew Neptune, Lennar Homes

E.17 COMMENT (Part IV.H, Note)

Does the note apply to all inspections, including rain events?

RESPONSE

The note has been slightly revised in the final permit to indicate inspection 'may' be conducted on the proceeding workday and to clarify the intent. This note was not intended to apply to inspections related to rain events.

Drew Neptune, Lennar Homes
APS

E.18 COMMENT (Part IV.B.1.b)

Requiring seed mixture and application specifications in the SWPPP is too prescriptive. Often an operator may not know at the time of SWPPP development what will be done or if sod or seed will be used.

RESPONSE

This provision does not require seeding be used. However, if seeding is proposed, the identification of seed mixture and application specifications are important components to this BMP. In order for re-vegetation to be an effective BMP, the mixture and application specifications must be compatible with climate and site conditions. If the decision to seed is made at some point during construction, the SWPPP documents should be modified to specify this information. No change has been made to the permit language.

David Mack, Granite Construction
Paul Haggerty, Lennar Homes

E.19 COMMENT (Part IV.G.2)

The SWPPP shall describe: Measures to minimize the generation of on-site dust should be removed because it is addressed through state and local air permitting requirements.

RESPONSE

The Department concurs this is an air quality issue addressed by state and local requirements, and the language has been removed from the final permit.

Westland Resources

APS

Forest and Soil Conservation Foundation

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

E.20 COMMENT (Part IV.B.1.a)

The commenter suggested adding “The locations of trees and boundaries of environmentally sensitive areas and buffer zones to be preserved shall be identified on the SWPPP map” to Part III.C.3.

RESPONSE

The Department agrees with the commenter’s suggestion indicating if trees and buffer areas are planned to be preserved as part of the project, those areas should be designate on the site map and the wording was added the Part III.C.3 under Site Map.

Westland Resources

E.21 COMMENT (IV.C.4)

While the intent of this provision is clear, prohibiting the discharge of any sediment during dry weather (that is, in non-stormwater discharge) would seem a vague and ultimately infeasible requirement open to interpretation by individual inspectors. It would seem to be more consistent with the rest of the permit to simply re-iterate that dry weather discharges be minimized to the extent practicable.

RESPONSE

The provision not to discharge sediment from a site during dry weather ‘to any waterbody’ is considered clear. However, to further clarify, this particular provision does not relate to dust blown from the site or to road track-out (addressed by other permit conditions.) This permit is for stormwater discharges and is not intended to allow placement of soils into waterbodies during dry weather. No change has been made to the permit language.

Westland Resources

E.22 COMMENT (Part IV.I.2.c)

Removal of sediment from off site paved areas (streets) cannot always be accomplished within 24 hours.

RESPONSE

The Permit has been revised to remove the 24-hour specificity, but require pollutants tracked off-site to be removed as soon as practicable, or as otherwise required by Federal, State, and local requirements (in the event those apply). In addition to the potential for pollutants tracked off-site reach waters of the U.S., the pollutants (e.g., dirt, mud, stones, etc.) have the ability to create physical hazards and damage to public and private property, as well as contribute to air pollution. As such, pollutants tracked off site should be cleaned up (removed) as soon as practicable. (Note also, washing track-out into a wash or MS4 system is not considered an appropriate clean-up BMP.)

Westland Resources

E.23 COMMENT (Part IV.H.1.b)

Include the provision to reduce inspection schedule during “dry conditions.”

RESPONSE

The State can experience dry and wet conditions during anytime of the year. Therefore, the prior provision limiting inspection schedule during dry conditions has been a source of confusion. No change has been made to the permit language.

APS

ADOT, Tucson District Office

Fennemore Craig, Homebuilders Assoc. of AZ

E.24 COMMENT (Part IV.C.4)

The CGP should clarify that sediment discharges during dry weather are only prohibited to the extent such discharges are associated with direct discharge of water from the site to receiving waters.

RESPONSE

See response to E.21 above.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

E.25 COMMENT (Part IV.F.4)

If the intent is to prohibit all new stormwater discharge connections to unique waters, then this should be stated more clearly in the permit.

RESPONSE

The Permit is reworded for clarification. The intent is to prohibit new discharge connections or permanent stormwater outfalls to unique waters. Additional clarification also is included in the Fact Sheet.

EPA

E.26 COMMENT (Part IV.C.4)

Please include after “waterbody,” “including dry washes,” if that is ADEQ’s intent.

RESPONSE

This Permit part is revised to include dry washes. Discharge of sediments from the site during dry weather is not authorized by this Permit.

ADOT, Tucson District Office

E.27 COMMENT (Part IV.H.4)

The draft CGP should be modified to state that inspection reports can be signed by any “qualified personnel” conducting the inspection.

RESPONSE

The Department considered options for allowing inspectors to sign the inspection reports. However, 40 CFR 122.22(b) limits those parties who are authorized, or can be duly authorized, to sign reports required by the Permit. Therefore, only those parties meeting the requirements of Parts VIII.J.1 and VIII.J.2 are authorized to sign documents required by the permit. No change has been made to the permit language.

Fennemore Craig, Homebuilders Assoc. of AZ

E.28 COMMENT (Part IV.C.3)

The Fact Sheet specifies smaller sediment basins and traps for areas less than 10 acres, but this requirement is not in the Permit.

RESPONSE

This was an oversight, and the Permit is revised in Part IV.C.3.d. to include the requirement for smaller sediment basins and traps serving less than 10 acres, and for linear projects.

Association of General contractors
AMEC Earth & Environmental, Inc.
City of Tucson

E.29 COMMENT (Part IV.H.4)

Is the protocol for including the inspection reports with the SWPPP the same for when there is more than one operator?

RESPONSE

Inspection reports must be included with the SWPPP as specified in the permit whether or not there are multiple operators. In some cases, joint operators, may however share a SWPPP document and have shared inspections, as well. No change has been made to the permit language.

Association of General contractors
AMEC Earth & Environmental, Inc.

E.30 COMMENT (Part IV.A)

Recommendation that construction activities be phased to the extent practicable per EPA SWPPP Guidance Document ESC Principle 2.

RESPONSE

This permit part was revised to include phasing or sequencing construction activities **if practicable** to minimize the area of disturbance at any one time
EPA

PERMIT PART V

F.1 COMMENT (Part V.D)

Analytical monitoring frequency is not well defined in the permit.

RESPONSE

The permit language has been revised for clarification. Again this provision applies only to sites in proximity to unique and impaired waters. The monitoring frequency is intended to be each time a pollutant is known or suspected to discharge from the facility.

EPA
Association of General Contractors
AMEC Earth & Environmental, Inc.
Pima County DOT
APS

F.2 COMMENT (V)

Historical data does not support any benefits to in-stream monitoring data, too many variables.

RESPONSE

Although we concur that there are variables in sampling stormwater, the Department does not agree that in-stream monitoring is of no benefit. In-stream monitoring can provide useful data about BMP effectiveness and additional pollutant load resulting from discharges from construction activities. In-stream monitoring is only required for sites in proximity to unique and impaired waters. No change has been made to the permit.

Town of Gilbert
Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

City of Phoenix
APS

F.3 COMMENT (Part V.D.4.b)

Monitoring should be for parameters likely to be present in the construction site runoff. If a stream is impaired for X, and the source of X is upstream, and the construction project does not have/use chemical X on-site, they should not have to pay for analyzing for X. Alternatively, if the source is unknown, the project should be able to collect one composite soil sample from the project area and analyze it for X.

RESPONSE

The permit was revised such that if the operator can demonstrate there is no reasonable expectation that discharges from the construction activities could contribute additional pollutant load for which the water is impaired, analytical monitoring for that parameter will not be required. However, the permit revisions also specify that as part of the demonstration, the operator must consider all on-site activities, including disturbance of on-site soils which may contain the pollutants of concern. Depending on the parameter of concern, such a demonstration may not be easily accomplished.

Town of Gilbert
City of Phoenix
Jay Knoll, SAHBA
Forest and Soil Conservation Foundation
APS

F.4 COMMENT (Part V.D.3)

Analytical monitoring locations are unclear.

RESPONSE

The Permit is revised to clarify that in-stream analytical monitoring is to be for construction sites located adjacent (or otherwise have a direct discharge) to unique or impaired waters. For sites within ¼ mile of, but not adjacent to, a unique or impaired water, and that do not discharge directly to the water, analytical monitoring is to be conducted at discharge locations at the construction site.

Town of Gilbert
City of Phoenix
Forest and Soil Conservation Foundation
Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Paul Haggerty, Lennar Homes

F.5 COMMENT (V.B.7)

Identify analytical methods and detection limits for analytical monitoring requirements.

RESPONSE

Analytical methods must be consistent with those specified in Part V.E of the Permit. In general, 40 CFR 136 methods are to be used. Detection limits were not previously specified, This Part has been revised to state that detection limits are to be below the surface water quality standard for the parameters of concern, whenever possible.

Jay Knoll, SAHBA
Forest and Soil Conservation Foundation

F.6 COMMENT

Since this new Section requires extensive monitoring, testing, and analysis, does ADEQ plan to define protocols for each of these activities? This would provide the specificity needed to achieve the consistency and quality ADEQ expects.

RESPONSE

Analytical monitoring was required in the former permit for sites located within ¼ mile of an unique or impaired water, this provision has not changed. However, this permit is written to provide additional direction and clarification for monitoring requirements. 40 CFR 136 test methods are to be used and samples, with the exception of field analyses, are to be analyzed by a certified laboratory. The permit specifies collection, preservation, tracking and handling procedures. Particular protocols for the collection of samples may differ depending on site specific conditions and are not included to provide flexibility. ADEQ recommends Standard Operating Procedures (SOPs) be prepared and included in the monitoring program required by Part V.B. to provide consistency in sample collecting. No change has been made to the permit language.

Jay Knoll, SAHBA

F.7 COMMENT

If monitoring is needed, where are the Arizona laboratories that are approved by ADEQ?

RESPONSE

ADEQ does not “approve” laboratories. Laboratories are certified for specific analytical methods by the Arizona Department of Health Services. A listing of certified laboratories may be obtained at

<http://www.azdhs.gov/lab/license/index.htm>

Jay Knoll, SAHBA
Paul Haggerty, Lennar Homes

F.8 COMMENT (Part V.D.1)

There are many instances when a water of the U.S. is not unique or impaired. Therefore, delete the requirement for monitoring when a water ‘enters a water of the U.S.’”

RESPONSE

All of Part V is applicable only to sites in proximity to unique and impaired waters. No change has been made to the permit language.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

F.9 COMMENT (PART V.F.1)

As consistent with other CGP elements, monitoring results should be required to be retained by the permittee, but not routinely submitted to the agency. If the agency requests the results, they should be made available by the permittee within a reasonable time frame.

RESPONSE

For sites within ¼ mile of an unique and impaired waters, the Permit requires the SWPPP be submitted to the Department with the NOI to better assure protection of these waters. The monitoring reports are a continuation of this evaluation process by the Department. No change has been made to the permit language.

APS

F.10 COMMENT

For unique, impaired, and not-attaining waters, ADEQ has arbitrarily expanded the BMP requirements of the CGP to include detailed and onerous monitoring requirements which go far beyond any permit conditions imposed in any prior stormwater permit issued either by ADEQ or the U.S. EPA.

RESPONSE

Many stormwater (AZPDES and NPDES) permits include analytical monitoring, particularly individual permits. The monitoring requirement was also included in Arizona’s former CGP (see Parts I.D.5, I.D.6, and VII.J). During the 5 year cycle of Arizona’s form CGP, the Department received routine

questions regarding analytical monitoring requirements. Therefore, in this Permit, the analytical monitoring requirement is clarified to assist operators with meeting the requirements and intent of this provision.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce

F.11 COMMENT

The CGP imposes costly visual and analytical monitoring requirements for turbidity. Analytical monitoring for turbidity should be deleted from the Permit.

RESPONSE

This monitoring is only required for projects in proximity to unique and impaired waters. Analytical monitoring for turbidity was selected (versus total suspended solids, for example) because it is an inexpensive analytical method for reviewing BMP effectiveness. With relatively inexpensive equipment and minimal personnel training (including a Standard Operating Procedure, see Comment F.6) this analysis can and is typically conducted in the field. No change has been made to the permit language.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

PERMIT PART VI

G.1 COMMENT (Part VI.B.1)

The reporting requirements in the proposed permit contradict federal spill reporting requirements.

RESPONSE

In response to the comment, the language for reporting of spills has been changed to include "...within a 24 hour period, or as soon as site staff have knowledge of the discharge."

Town of Gilbert
City of Phoenix

PERMIT PART VII

H.1 No significant comments were received by the Department on this Part of the Permit.

PERMIT PART VIII

I.1 COMMENT

The Department received a few comments concerning proposed language changes to Part VIII. One commenter indicated the reporting requirements were over reaching. Comments were received that the upset and by-pass provisions in the previous permit should be restored.

RESPONSE

All provisions in this part are 'standard conditions' that are required by federal and state rules to be in all NPDES/AZPDES permits. (40 CFR 122.41) Therefore, substantive changes to the provisions are not an option. In response to the comments about the by-pass and upset provisions, the Department has restored the CFR text in sections P and Q. No other changes were made to Part VIII of the permit.

Fennemore Craig, Homebuilders Assoc. of AZ
Forest and Soil Conservation Foundation

PERMIT PART IX

J.1 COMMENT (Part IX.A and B)

The language regarding civil and criminal penalties should be changed to specify that these relate to ‘knowing’ violations.

RESPONSE

The language used is consistent with Arizona Revised Statutes (A.R.S. 49-262); therefore, these penalty provisions are not changed in the Permit.

Howard Myers, SPESCC
Forest and Soil Conservation Foundation

PERMIT PART X

K.1 COMMENT

Definition of “common plan of development” is unclear.

RESPONSE

Generally speaking, if a project is a small part of a larger vision, a store in a mall area, a house in a subdivision, a parking lot in a retail center, etc., it is part of a larger common area and it needs permit coverage. The "plan" in a common plan of development or sale is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. This concept is further described in the fact sheet. No change has been made to the permit language.

Town of Gilbert
City of Phoenix

K.2 COMMENT

The term “receiving water” is not defined in the permit. They should be defined as ‘navigable waters.’

RESPONSE

A definition of the term “receiving water” is added to Part X as indicating this is a water of the U.S and conveyances thereto. See A.8.

Dave Kimball, AZ Chamber of Commerce & Phoenix Chamber of Commerce
City of Tucson
Town of Gilbert
City of Phoenix
Pima County DOT
Paul Haggerty, Lennar Homes

K.3 COMMENT

Define the terms “contractor,” “owner,” and “operators.” ADEQ should articulate a flexible approach to defining who is an operator.

RESPONSE

The term “contractor” was used only once in the Permit in reference to concrete providers; the permit language has been modified to remove this term. “Operator” is defined in Part III.B.1. “Owner or operator” means the owner or operator of any “facility or activity” subject to regulation under the NPDES program.

A commenter requested we expanding the term “operator” to include “...persons under the direct supervision of his supervisor who’s day-to-day responsibilities include without necessarily the

ongoing presence of his supervisor, provides or is involved with the coordination, provides information, provides instruction as to the finished project, job, work or project, and schedule of completion, and any materials used or not used, and any fees or costs, associated, revision, requests relative to the plans, specs, and on-site construction activities.” The commenter wishes this person to have the ability to sign the certification statement in Part VIII.J. However, this is not consistent with 40 CFR 122.22 (adopted by Arizona rules) certification requirements. No change has been made to the permit language.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Paul Haggerty, Lennar Homes
Fennemore Craig, Homebuilders Assoc. of AZ
City of Tucson

K.4 COMMENT

Add to the permit that stormwater discharges of fertilizers and tackifiers resulting from hydroseeding activities are not a permit violation.

RESPONSE

The use of fertilizers and tackifiers resulting from hydroseeding activities are not prohibited by this permit. The permit, by nature, allows some discharge of pollutants in stormwater. Discharges containing excess quantities of these chemicals, however, have the potential to cause a water quality standards violation in some areas, and that would also be a violation of the permit. Fertilizers and tackifiers are potential sources of pollutants, and should be identified as such in the SWPPP, with effective BMPs put in place to minimize their impacts on stormwater. The permit language has been changed to clarify such BMPs are required for these activities.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting

K.5 COMMENT

Define the term “storm event.”

RESPONSE

The term “storm event” is changed to “rain event” and has been defined in the Permit Part X.

Howard Myers, Stormwater Pollution Erosion & Sediment Control Consulting
Jay Knoll, SAHBA

K.6 COMMENT

Define the term “drainage system.”

RESPONSE

The term “drainage system” and the usage has been modified so the term is removed from the permit.

Jay Knoll, SAHBA

K.7 COMMENT

Redefine the term “business day.”

RESPONSE

The term is redefined in the permit to include Monday through Friday, except legal holidays observed by the state of Arizona.

Jay Knoll, SAHBA
ADOT, Tucson District Office

K.8 COMMENT
Redefine the term “day.”

RESPONSE

Redefining this term could have unintended consequences in the permit requirements; therefore, the permit language has not been changed.

Pima County DOT
Jay Knoll, SAHBA
ADOT, Tucson District Office

K.9 COMMENT
Would the Palmer Drought Severity Index (PDSI) be better in determining drought than Standard Precipitation Index (SPI)?

RESPONSE

The Department is aware that there is more than one drought indicator which may be of value. However, providing more than one option for defining drought conditions in the permit could create confusion and conflict. Therefore, the SPI remains the recognized source for determining drought conditions in this permit. The permit language has not been changed.

Jay Knoll, SAHBA

K.10 COMMENT
Include “time” to definition of “received.”

RESPONSE

Including “time” to definition is not necessary with respect to the submission of NOIs, NOTs, or waivers. The permit is structured based on date. The permit language has not been changed.

Jay Knoll, SAHBA

K.11 COMMENT
Change “any” to “a” under “significant contributor of pollutants.”

RESPONSE

The term “significant contributor of pollutant” is no longer used in the permit. Therefore, the term is deleted from the definitions.

Jay Knoll, SAHBA
Howard Myers, SPESCC

K.12 COMMENT
Define “dry weather in southern Arizona.”

RESPONSE

The term “dry weather in Arizona” is not used in the permit. This general permit covers all construction activities in Arizona. The term “dry weather” is defined by inference in the definition of “rain event.”

Jay Knoll, SAHBA